

From: Sutherland, Ryan
Sent: 2017-09-19T17:39:04-04:00
Importance: Normal
Subject: Daily News Report - September 18-19
Received: 2017-09-19T17:40:01-04:00
[Daily News Report Sept 18-19.docx](#)

Attached is the daily news report for September 18-19.

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UTAH – TOP STORIES – SEPTEMBER 18-19, 2017

1. Op-ed: Non-producing oil and gas leases tie up 1.7 million acres of land in Utah

The Deseret News, Sept. 17 | Chris Saeger

Despite strong public support for protecting our outdoor heritage, since the start of the Trump administration the scale has been steadily tipping in favor of the special interests that threaten access to public lands. Secretary of the Interior Ryan Zinke and the Department of the Interior (DOI) are short-changing families, using loopholes to capitalize off of our public lands and unfairly diverting taxpayer money to a handful of elites. From day one, this administration has opted to shelter the millionaires and billionaires in the oil and gas industry instead of our irreplaceable public landscapes, setting the stage for a rigged system.

2. Op-ed: Upcoming forum could facilitate finding common ground on public lands issues

St George News, Sept. 17 | Tom Butine

The use and management of Public Lands has become an important and divisive issue in Southern Utah, across the state and nationally.

3. Utah quietly tells feds: Trim Bears Ears monument by 90 percent

The Salt Lake Tribune, Sept. 17 | Brian Maffly

If maps Utah has submitted to the Interior Department are a guide, Bears Ears National Monument will be drastically cut in size.

4. Leaked Zinke recommendation: shrink Bears Ears, 5 other national monuments

The (St George) Spectrum, Sept. 18 | David DeMille

A leaked memo from Interior Secretary Ryan Zinke recommends that President Donald Trump shrink six national monuments, including Utah's Bears Ears and Grand Staircase-Escalante, as well as Nevada's Gold Butte.



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5. Mormons are among the few who want less federally protected land. Their history explains why

The Washington Post, Sept. 18 | Christine Colbert

News Monday that Interior Secretary Ryan Zinke has recommended that President Trump modify 10 national monuments highlights what could be one of the most unpopular environment-related actions of the Trump administration. Zinke's department solicited public comments this summer, and 98 percent of them spoke favorably about keeping or even expanding monuments' borders.

6. Boundaries look like 'pick-up sticks': Stakeholders look to solve American Fork Canyon maps problem

The Deseret News, Sept. 18 | Ashley Stilson

AMERICAN FORK CANYON — No one really knows who owns what in American Fork Canyon.

Some areas are private property, others are federal lands, and everything else belongs to either Snowbird or the rest of us.

7. Preserving an American tradition: Maintaining access and increasing opportunities on our public lands

The Hill, Sept. 19 | Rep. Rob Bishop (R-Utah)

Sportsmen are the heart and soul of conservation policy in the United States. In the spirit of the first Chief of the U.S. Forest Service, Gifford Pinchot, our nation values the “wise use of the Earth and its resources for the lasting good of men” through responsible resource management, conservation and recreation.



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E&E/NATIONAL NEWS – TOP STORIES

1. Shrink at least 4 national monuments and modify a half-dozen others, Zinke tells Trump

The Washington Post, Sept. 18 | Juliet Eilperin

Interior Secretary Ryan Zinke has recommended that President Trump modify 10 national monuments created by his immediate predecessors, including shrinking the boundaries of at least four western sites, according to a copy of the report obtained by The Washington Post.

2. Zinke's fire memo calls for aggressive forest thinning

High Country News, Sept. 18 | Elizabeth Shogren

As the West contends with a big wildfire season, Interior Secretary Ryan Zinke urged his staff to take aggressive action to prevent wildfires. His memo calls on managers to “think differently” about reducing the accumulation of dense vegetation. He wants vegetation cleared if it encroaches on roads or buildings, and dead trees removed if they can spread fire to valuable property or beyond the boundaries of parks, refuges or other Interior Department lands.

3. Crossing Borders: The Colorado River - One Ecosystem, Many Managers

Utah Public Radio, Sept. 19 | Julie Kelso

As you float down the Colorado River from Glen Canyon Dam to Lake Mead you may not realize that river right, the north side of the river, is owned and managed by the National Park Service and river left is managed by several groups including the Hualapai and Havasupai Indian nations.

4. LAW: Feds on notice as court smacks down climate review for coal

E & E News, Sept. 19 | Ellen M. Gilmer

A major court decision dressing down the federal government for "irrational" consideration of the climate impacts of coal leasing stands to reverberate throughout the Trump administration.



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5. PUBLIC LANDS: Greens say Trump admin must keep drilling away from 15 sites

E & E News, Sept. 19 | Scott Streater

A conservation group wants the Trump administration to keep oil and natural gas drilling, mining and other development away from more than a dozen federal sites, including two national monuments Interior Secretary Ryan Zinke has recommended cutting in size.

6. FEDERAL AGENCIES: Leak crackdown: 'One man's policy is another man's gossip'

E & E News, Sept. 19 | Hannah Northey

Many federal employees preparing for Trump administration training this week on combating information leaks are taking the effort in stride.

7. LAW: Enviro restart bid for broad review of coal leasing program

E & E News, Sept. 19 | Ellen M. Gilmer

Environmental groups that successfully pushed the Obama administration to conduct a broad review of the federal coal leasing program are taking up their fight again as the Trump administration continues its retreat from the plan.

8. LAW: In win for tribe, court says wind farm counts as 'mining'

E & E News, Sept. 19 | Ellen M. Gilmer

When is a wind farm also a mining operation? When it's scraping up rocks in Indian Country and using them.

That's the upshot of a federal court decision siding with the Osage Nation in a battle over whether wind development atop Osage land in Oklahoma requires federal and tribal approval.



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9. USGS: Thousands of webpages are gone. Agency blames search tool

E & E News, Sept. 19 | Brittany Patterson

Access to climate data on the U.S. Geological Survey's website has fallen sharply in recent months, flummoxing some scientists and stoking fears that the Trump administration is nixing information about global warming.

10. NATIONAL MONUMENTS: Dems to Trump: 'Reject this sham report'

E & E News, Sept. 19 | Jennifer Yachnin

Democratic lawmakers yesterday accused Interior Secretary Ryan Zinke of dismissing "the voices of the majority" in recommending that President Trump slash the size of a half-dozen monuments and open others to commercial uses.

11. NATIONAL MONUMENTS: Zinke review of N.M. sites contains errors — Sen. Heinrich

E & E News, Sept. 19 | Kellie Lunney

Interior Secretary Ryan Zinke's proposed recommendations to alter two of New Mexico's national monuments are based on factual errors, Sen. Martin Heinrich said today.

12. INTERIOR: Whistleblower included in staff-reassignment probe — IG

E & E News, Sept. 19 | Michael Doyle

The attorney for high-profile Interior Department whistleblower Joel Clement asked investigators today for reassurances that his case will be included in a broader inquiry into the department's controversial reassignment of senior staff.



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UTAH – FULL STORY

1. **Op-ed: Non-producing oil and gas leases tie up 1.7 million acres of land in Utah**

The Deseret News, Sept. 17 | Chris Saeger

Despite strong public support for protecting our outdoor heritage, since the start of the Trump administration the scale has been steadily tipping in favor of the special interests that threaten access to public lands. Secretary of the Interior Ryan Zinke and the Department of the Interior (DOI) are short-changing families, using loopholes to capitalize off of our public lands and unfairly diverting taxpayer money to a handful of elites. From day one, this administration has opted to shelter the millionaires and billionaires in the oil and gas industry instead of our irreplaceable public landscapes, setting the stage for a rigged system.

Our public lands, and the opportunities they offer Americans of all stripes, are an intricate part of our outdoor heritage. While some of these landscapes are open for responsible development, some of these places are simply too special to be developed because of their cultural, historical and recreational value.

For years, federal land managers have been tasked with balancing development with conservation across our public lands, guided in large part by the multiple-use mandate. Under this policy, public lands must be used by the public and benefit the public. If followed, the mandate ensures that conservation and responsible development remain balanced and that our public landscapes are maintained for future generations to enjoy.

Unfortunately, the system overwhelmingly favors oil and gas development over conservation, despite the economic benefits recreation also brings to communities, and with each passing day, the Trump administration has demonstrated their eagerness to double down on this rigged system and embolden the oil and gas industry and its lobbyists in Washington, D.C., while ignoring the outdoor industry.

On March 28, Trump signed an executive order that would deliver a stark message to visitors, businesses and the local community who enjoy and depend on Utah's public lands: our public lands are all open and available for energy development. With a stroke of the pen, President Trump offered up our public lands — and Utah's future — to the lobbyists in the oil and gas



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industry without any input from the people whose lives and livelihoods will be gravely impacted by this reckless order. Now, the future of our iconic landscapes remain in jeopardy while the Trump administration shelters the oil and gas industry, and their profits, with a rigged system.

About 89 percent of Utah's public lands are currently open to leasing, including lands bordering treasured national parks and monuments. The oil and gas industry is allowed to purchase leases and then hold onto them — therefore restricting public access — until the company is ready to drill. In Utah alone, there are over 1,460 non-producing oil and gas leases consuming 1.7 million acres of land — land that could be being utilized by the public instead of being monopolized by the oil and gas industry. There is virtually no statute of limitations on these parcels of land; they can remain unused for years, stripping valuable recreational experiences from visitors and economic opportunities from local communities and small businesses.

The oil and gas industry isn't just taking advantage of Utahns, it is taking advantage of every American. High-paid industry attorneys are taking advantage of loopholes that allow the industry to continue to capitalize off of our iconic landscapes without any compensation to taxpayers. These loopholes allow them to manipulate the rigged system and only pay pennies on the dollar in royalty rates to taxpayers while reaping record profits.

The status quo, where the oil and gas industry can leverage loopholes to profit off the backs of American taxpayers and destroy iconic landscapes in Utah, is rigged against the majority of Americans' best interests. The system in place now, as reinforced by the Trump administration, exists solely to benefit corporate barons and a few powerful special interests in Washington. This is no way to do business. It's time the oil and gas industry is held accountable for its profits and is stopped from treating our public lands as its personal cash cow.

Chris Saeger is executive director of the Western Values Project.

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2. Op-ed: Upcoming forum could facilitate finding common ground on public lands issues

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The use and management of Public Lands has become an important and divisive issue in Southern Utah, across the state and nationally.



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There have been very few forums for civil discourse on this subject in which the public can share their understanding and have their voices heard. There is little opportunity to derive a factual basis for our elected officials' positions and policies. You can help change that.

Please attend a forum for "Finding Common Ground on Public Lands" to identify shared values, issues and paths to resolve them, on the morning of Sept. 21 at Dixie State University, hosted by Conserve Southwest Utah and DSU Sustainability Club. To find out more and to register, follow this link or search "Eventbrite Finding Common Ground on Public Lands" in your web browser. Our state and local representatives have been invited.

Public Lands, by definition, are lands owned by the public; that is, owned by citizens collectively, not privately owned by individuals or corporations. Generally, when the term Public Lands is used, it is meant to mean lands owned by all U.S. citizens, managed by federal agencies with alphabet-soup names like BLM, USFS, BoR, USFWLS and NPS, as directed by the U.S. Congress at the behest of the citizens they represent.

When the Western states were created, Congress decided to not give away all the land to private owners for a variety of lessons learned in the existing states. Roughly half of the lands in many of these sparsely populated large Western states, including Utah, were retained for the benefit of all current and future Americans.

The issues related to these lands are centered on how the lands should be used, and who gets to decide. There are two extremes: (1) keep the lands federally-managed and protect them all, and (2) give the lands to state or local governments for privatization and short-term economic development. There are several key issues:

- Who are the rightful owners of these lands; should ownership be changed and if so, how?
- How should the lands be used; how do the owners think they should be used?
- Who is best equipped and funded to manage these lands?
- Is Utah economically disadvantaged by these lands?
- What is best for Utah's local communities?
- The Finding Common Ground forum will explore these issues and more.

A primary job of our elected representatives is to develop positions on issues and implement policies that support them. How do they do this? We propose that they engage their constituents



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in defining the issues, developing positions with a basis in facts and values and developing policies to implement those positions.

When this does not happen, the results are flawed and (include) contentious positions and policies, influenced by hidden interests, not supported by facts, and harmful to the public. This in turn results in angry, confused, divided, disengaged and apathetic constituents. The goal of this forum is to begin changing that direction on Public Lands in our backyard.

Written by TOM BUTINE, board president of Conserve Southwest Utah, a grassroots nonprofit organization advocating conservation of the region's natural resources.

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3. Utah quietly tells feds: Trim Bears Ears monument by 90 percent

The Salt Lake Tribune, Sept. 17 | Brian Maffly

If maps Utah has submitted to the Interior Department are a guide, Bears Ears National Monument will be drastically cut in size.

The state's vision, shared with Interior Secretary Ryan Zinke, is to shrink Bears Ears to one-tenth its current 1.35 million acres, scaling the southeastern Utah monument down to about 120,000 acres surrounding Mule and Arch canyons west of Blanding, according to maps and other documents prepared by Gov. Gary Herbert's office and obtained by The Salt Lake Tribune through records requests.

With the Trump administration's final decision on Bears Ears and 26 other monuments still pending, Herbert's top public-lands lawyer argues the state's proposal — which would carve out archaeologically rich Cedar Mesa and Elk Ridge and other key features — will do more to preserve the region's countless archaeological sites and ensure the sanctity of its scenic and fragile lands.

But Utah's plan was immediately panned by Native American leaders, who say it disregards the wishes of the tribes that sought the monument in the first place.

The state's proposal "demonstrates their failure to listen to the concerns of our people who have lobbied and fought for over 80 years for this designation," Navajo Nation President Russell Begaye said Friday.



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“Now that we finally have achieved that, we want to keep the designation as it is,” Begaye said. “We are asking President Trump and his administration to support our position. It is unfortunate the state and [San Juan] County do not respect the views of their citizens and neighbors.”

Added Willie Grayeyes, a Utah Navajo who chairs Utah Diné Bikéyah, created to protect Bears Ears: “We are Utah citizens and Americans too, yet our traditional wisdom and our ancestral ties seem not to matter.”

‘A thoughtful, careful’ plan

State officials, however, say tribal wisdom matters a great deal and their concerns played a prominent role in crafting the state’s Bears Ears alternative, which could serve as the basis for Zinke’s still-undisclosed recommendations for the controversial monument designated last December by President Barack Obama.

Thousands of ancient Native American sites are embedded in the canyon-cleaved landscape spanning Cedar Mesa, Grand Gulch, White Canyon, Dark Canyon and Elk Ridge — so many that their full extent will probably never be known.

According to maps developed by the Utah State Historic Preservation Office, only 9.2 percent of the monument has been inventoried, mostly lands east of Comb Wash and along Elk Ridge. The office has records for more than 9,000 known Native American sites and historic structures. The greatest densities have been recorded near the head of Arch Canyon, within the state’s monument proposal, and farther south along Comb Ridge.

According to state Assistant Attorney General Tony Rampton, studies show the most serious threat to archaeological sites, especially on the Colorado Plateau, is uncontrolled visitation and access. National monument status throws down the welcome mat to the world, Rampton said, but does nothing to prevent damage to the area’s ancient dwelling, granaries, middens, rock art panels and other cultural treasures that could happen if tourists flock to that corner of San Juan County.

The Utah plan submitted to Interior is “a thoughtful, careful way for structuring a Bears Ears monument that will actually accomplish what people want to have happen out there, which is to protect the Native American sites, to protect traditional Native American uses and to preserve things as much as possible as they are and have been for 700 years,” Rampton said.



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“This place is as it is because it has been left alone and a monument is not leaving this place alone,” he said. “It is going to change it dramatically.”

Utah’s vision also includes greater management authority for the tribes and beefed up enforcement of federal laws that protect archaeological resources, while providing monument visitors with a highly regulated experience on par with what they get at Mesa Verde National Park.

Rampton described a meeting with a 93-year-old Navajo woman from Aneth who had deep concerns about a massive monument overlaying an area her family has used for generations to hunt and gather firewood and herbs.

“Their concern is the more people come the more regulations there will be. Their Native American traditions are going to be chipped away and chipped away and that threatens them,” Rampton said.

What size is ‘right sized’?

Three weeks ago, Zinke completed his 120-day review of 27 large monuments, but his recommendations to President Donald Trump remain under wraps. An Interior spokeswoman declined last week to comment on the review’s status or Utah’s Bears Ears plan.

Zinke has said he is recommending that none of the 27 monuments be revoked, but he has called for reductions to a “handful” — believed to include Bears Ears and Utah’s Grand Staircase-Escalante National Monument. The two southern Utah monuments are among the largest in the Bureau of Land Management’s National Conservation Landscape System.

Also obtained by The Tribune was San Juan County’s idea for monument boundaries, which focuses on different terrain than the state plan, though both include the iconic Bears Ears Buttes. The county’s 422,000-acre proposal for Bears Ears is anchored by Cedar Mesa, covering the southern third of the current monument and overlapping with the state’s redrawn boundaries along State Route 95.

Dated Feb. 28, however, the county’s map was developed two months prior to Zinke’s monuments review and reportedly may not reflect the county’s current thinking. San Juan County Commission Chairman Bruce Adams did not respond to a request for comment.



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While more sweeping than San Juan County's initial ideas for Bears Ears, Utah's proposal to Interior is not as drastic as a resolution passed earlier this year by the state Legislature and signed by Herbert, which calls for the monument to be erased entirely. But Utah's vision still seeks a 90-percent reduction and, if enacted, is likely to be challenged in court by the tribes that sought the monument.

Legal fight brewing

"The president does not have authority to revoke or modify Bears Ears, and we would move quickly to have any action declared unlawful," said Matt Campbell, an attorney with the Native American Rights Fund, a Colorado-based non-profit representing the Hopi, Zuni and Ute Mountain Ute tribes.

But at his monthly news conference Thursday, Herbert said the tribes could be litigating against their own best interests, especially if a monument results in unwelcome visitation and Congress acts to give tribes a much higher level of management authority than is provided in Obama's proclamation.

"Archaeologists tell us the biggest thing we need to have for protection is less people going to these sites, yet a monument attracts people to go to the sites," Herbert told reporters. "It's counterproductive so I think we can come together on a common-sense approach."

The state's proposal includes pieces of Manti-La Sal National Forest where Bears Ears Buttes rise off Elk Ridge. It extends east across Mule Canyon, home to the popular House on Fire ruin, and ends at another set of famous ruins at Butler Wash. All these sites happen to be among the few places Zinke visited during his May tour of Bears Ears and Grand Staircase.

Monument opponents found a sympathetic ear in Zinke, who drew criticism during his Utah visit for declining to meet with tribal supporters of the monument. And in his preliminary report of June 10, Zinke called for Bears Ears to be "right sized," concluding its vast span exceeds the scope of the Antiquities Act, which requires monuments be confined to the smallest areas possible.

That report came out right after Utah officials provided Interior with their proposed Bear Ears maps. The state's plan also calls for a national recreation area for Indian Creek, the monument's northeast extension bordering Canyonlands National Park. The world renown rock-climbing



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mecca would be administered by the National Park Service, though such a move would require action by Congress.

Utah also proposes a mineral withdrawal for much of the southern half of Bears Ears, which would rule out mining and other extraction, but that raises questions about the state's intentions for the monument's northern half.

In 2015, the Legislature designated the "San Juan Energy Zone", which covers much of what became Bears Ears the following year, because it contains "abundant world-class deposits" of mineral wealth.

Tribal officials remain unhappy the state did not consult them on any of its suggestions to Interior, casting the move as a slight to their sovereignty.

"Bears Ears National Monument was created through the government to government relationship that Tribes have with the United States. Now it appears that the monument is being undone while ignoring that relationship," said Carleton Bowekaty, co-chairman of the Bears Ears Inter-Tribal Coalition.

Bowekaty is the Zuni Pueblo's representative on the five-member Bears Ears Commission, empaneled under Obama's proclamation giving five tribes a special advisory role in monument management. The Interior Department has put all management planning on hold while uncertainty over monument boundaries remains unresolved.

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4. **Leaked Zinke recommendation: shrink Bears Ears, 5 other national monuments**

The (St George) Spectrum, Sept. 18 | David DeMille

A leaked memo from Interior Secretary Ryan Zinke recommends that President Donald Trump shrink six national monuments, including Utah's Bears Ears and Grand Staircase-Escalante, as well as Nevada's Gold Butte.

The memo, which was not publicly released when Zinke submitted it to the White House in late August, is short on specifics, not describing exactly which parts of the monuments would be



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reduced or by how much. The memo, first reported by the Wall Street Journal, was later obtained by the Associated Press.

It names Bears Ears, Grand Staircase-Escalante, Gold Butte and Oregon's Cascade-Siskiyou as monuments that should be reduced, with two marine monuments in the Pacific Ocean also pegged for reductions.

Significant changes to several others are also proposed, including Organ Mountains-Desert Peaks and Rio Grande del Norte in New Mexico, as well as Katahdin Woods and Waters in Maine.

The memo describes issues with recent monument designations, suggesting that the 1906 Antiquities Act, first used by President Theodore Roosevelt, has been used to carve out large swaths of western lands for unnecessary protections.

"While early monument designations focused more on geological formations, archaeological ruins, and areas of historical interest, a more recent and broad interpretation of what constitutes an 'object of historic or scientific interest' has been extended to include landscape areas, biodiversity, and viewsheds," it reads.

Various organizations have vowed to fight any proposed changes to the monuments, citing legal questions about whether Trump actually has the authority to overturn monument designations made by his predecessors.

Conservationists, some tribal groups, outdoors enthusiasts and others have said they would sue over the issue.

"These recommendations put at risk our way of life in the west by threatening access to public lands," said Chris Saeger, executive director of the Western Values Project, an advocacy group based out of Zinke's home state of Montana.

As of Monday, neither the Interior Department or the White House would comment on the memo.

Four months for 27 monuments

Zinke's recommendations cap a four-month review period ordered by Trump in April during a publicized signing ceremony where the president called the designation of sites like Bears Ears



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“land grabs.” In total, 27 monuments were pegged for review, including any that were more than 100,000 acres and designated since 1996.

A monument designation prevents new mining and drilling operations, and can curtail logging, grazing, road building, recreation and other uses, depending on management rules set up upon designation.

But some recent designations, including several large monuments created in the waning months of the Obama administration, were controversial with state and local governments where Republican leadership argued monuments could stymie local economies.

Trump’s order included every monument of more than 100,000 acres designated in the last two decades, spanning the decisions of three past presidents.

The leaked memo, titled “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act,” provides no details on actual changes in acreage to the monuments, although it does spell out some management changes and floats the idea of using different forms of protection for certain areas.

Utah monuments

Zinke’s review covers a 21-year period bookended by two of the more controversial monument designations in recent memory, both of which reside in Utah: the 1.9 million-acre Grand Staircase-Escalante National Monument designated by President Bill Clinton in 1996 and the 1.4 million-acre Bears Ears National Monument designated by President Barack Obama late last year.

Utah’s state and local leadership have been virtually unanimous in their support of readdressing Utah’s monuments, both of which were opposed by the state’s congressional leadership when they were created.

“With the stroke of a pen, President Obama crippled a multi-year effort to solve public lands issues in Utah by locking up a million acres and jeopardizing negotiations over another 10 million,” U.S. Rep. Chris Stewart, R-Utah, said last month when Zinke’s review was completed, referencing a failed attempt last year by Utah lawmakers to pass legislation on public lands in and around the Bears Ears area.



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A coalition of tribal leaders, conservation groups, archaeologists and others pushed for the Bears Ears designation, which originally encompassed a larger area of about 1.8 million acres.

After years of negotiations, President Barack Obama granted monument status just before leaving office, although to a smaller area.

Utah's elected leadership opposed it, and they were credited, especially U.S. Sen. Orrin Hatch, with influencing Trump to order the review.

Public process

Zinke's review has provided a swift turnaround in the national monuments debate, undoing what had developed after years of contentious debate.

National monuments have been especially controversial in Utah since 1996, when President Clinton surprised the governor and other elected officials by announcing he would designate 1.9 million acres for the Grand Staircase-Escalante monument along the state's southern border.

For the next two decades, the move remained a sore spot for state and local leaders, with the Bears Ears debate reviving many of the same heated emotions.

Zinke, formerly a Republican congressman from Montana, spent four days in the beehive state in May, visiting the two monuments and meeting with elected officials as he began the review.

The county commissioners and other elected leaders in the surrounding areas applauded him for making the effort, saying he was more willing to local concerns about lack of access, transportation issues, and the feeling among locals that the monuments were hindering access to valuable natural resources and economic development.

But opponents of changing the monuments argue he spent too little time listening to other voices. Tribal leaders in the Bears Ears area complained that he would only take an hour-long visit with representatives from the inter-tribal coalition that pushed for the monument. Business owners in gateway towns like Boulder and Kanab argued shrinking the Grand Staircase-Escalante monument would hurt a thriving tourism industry and hurt the state's reputation among outdoors groups.



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Zinke's review prompted more than 2.8 million comments during a public review period, and according to multiple analysis were overwhelmingly in favor of keeping the monuments as they are currently. A study by the Western Resource Advocates suggested 99 percent were in favor of preservation.

A summary review released in late August out of the Department of the Interior acknowledged that a majority of the comments were in favor of keeping the monuments, but did not specify by what amount.

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5. Mormons are among the few who want less federally protected land. Their history explains why

The Washington Post, Sept. 18 | Christine Colbert

News Monday that Interior Secretary Ryan Zinke has recommended that President Trump modify 10 national monuments highlights what could be one of the most unpopular environment-related actions of the Trump administration. Zinke's department solicited public comments this summer, and 98 percent of them spoke favorably about keeping or even expanding monuments' borders.

With one exception: The Americans most vocally opposed to government control of Western lands were Utah lawmakers and their rural constituents. And of those, many are probably descendants of Mormon pioneers.

While the religious identities of opponents weren't public, this rings true to me that Mormons could be the leaders of this effort. I know this from my own family's faith history. My ancestors were among the first Americans to convert to Mormonism in the 1830s and were among those who led the religion after the death of its founder, Joseph Smith. My great-great-great-grandfather was Brigham Young's brother. I grew up in Utah, and I've lived all over its desert hinterlands, residing in some of the very towns that sit adjacent to national parks and monuments. I've also been studying Utah's land-grab movement since it gained considerable traction in the state several years ago.

There is a lot more to this than coal mines and fracking wells, and it has everything to do with Utah's Mormon culture.



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Distrust of the federal government. Since Mormon pioneers first traversed the West to settle Utah, they have harbored a deep-seated distrust for the federal government. Driven from Missouri by angry mobs, the Mormons appealed to the government for help and received none. At that time, they practiced polygamy. The Mormons were wildly unpopular, and their polygamist tendencies made them pariahs when it came to receiving aid or assistance from anyone. When they set out across the plains, their goal was actually to leave the United States, which is how they wound up in the Utah territory.

I recently spoke with Mormon historian Matthew Bowman, who elaborated on this rift: “The Mormons really believed through the 19th century that the United States government no longer represented them. Even though the Mormons did eventually accommodate themselves to the American government, there was still a kind of distinctive suspicion.”

Today, historically frosty attitudes toward the federal government have only reached a light simmer at best. Mormons still don’t take too kindly to the feds coming in and telling them what to do.

Distrust of the outside world. After arriving in Utah, the Mormon pioneers were isolationists. They organized their own militia, began developing their own resources and created planned communities built on a communal paradigm. Their goal was to become completely self-sufficient. Never again would they rely on the outside world that had been so unkind to them. They embraced the barrenness of the landscape they settled on, hoping it would prevent outsiders from moving in.

And even though modern city centers such as Salt Lake City and Ogden feature progressive communities that enjoy a robust connection with the outside world, much of rural Utah does not, and there is still an imaginary bubble over Utah. “There is a very definite cultural world, often inward-looking world, compared to other parts of the country,” said Susanna Morrill, a religious studies professor at Lewis and Clark College.

Tourism represents a dependence on U.S. capitalism, which would require rural Utahns to cater to the outside world. And if you haven’t noticed, there is a reason coffee shops, bars and liquor stores are hard to come by in Utah. Mormons don’t want that stuff around, since they regard such common delights as conduits of sin. But when there are tourists to please, it all starts moving in. This is not comforting for them.



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It's our land, not yours. I know this sentiment is real among Utah Mormons, because I've seen it, and I've been guilty of it myself. My pioneer ancestors believed that Utah was their promised land, given to them by God to use, and that they were supposed to improve upon nature, letting none of it go to waste. As stewards of the land, they believed they couldn't let it sit idle, and the drive to make it produce is as strong as ever. The idea that Utah's public land should be controlled by the progeny of a small group of white settlers is alive and well among some modern-day Mormons, and they support acquiring federal land as an effort to "take back" what they believe is rightfully theirs.

For many Utahns, whose families have a long history of working the land, monument designations can represent a waste of available resources, forcing locals to comply with federal regulations and the wishes of an outside world they think is corrupt. However, the numbers don't exactly support resource extraction as a sustainable option for Utah's economy. In 2014, Utah exported \$8.8 million worth of petroleum and coal, according to a 2016 report by the Utah Economic Council. That same year, tourists spent \$7.98 billion in Utah, bringing in \$1.07 billion in tax revenue for the state, according to a 2016 report by the University of Utah's Kem C. Gardner Policy Institute. Tourism dollars will continue to flood the state in coming years, while fossil fuels, by their very nature, will eventually run dry.

Yet Mormon lawmakers are among the most prominent advocates to reduce federally protected lands. Utah U.S. Sen. Orrin G. Hatch (R) is the very individual who asked Trump to investigate the designations of Utah's Grand Staircase-Escalante and Bears Ears national monuments and to reduce their boundaries. Hatch, U.S. Sen. Mike Lee and U.S. Rep Rob Bishop — all Mormon Utah Republicans — are named as the top three offenders on the Center for Biological Diversity's list of "public lands enemies."

The Mormon religion holds enormous sway over the opinions of its members, who make up the majority of Utah's residents. And although the church has spoken in favor of a sustainable approach to the environment, it has yet to advocate federal protection of public lands. Until Mormon leaders declare their support for such stewardship and call for the preservation of our nation's greatest treasures, Utah politicians will continue to bend Trump's ear toward privatization and resource development, reflecting their culture's historical distrust and proprietary notions regarding the very lands that really belong to all of us, not just a few.



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Christine Colbert writes from her home in Washington state. She is developing a book about Utah and public lands in the West.

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6. Boundaries look like 'pick-up sticks': Stakeholders look to solve American Fork Canyon maps problem

The Deseret News, Sept. 18 | Ashley Stilson

AMERICAN FORK CANYON — No one really knows who owns what in American Fork Canyon.

Some areas are private property, others are federal lands, and everything else belongs to either Snowbird or the rest of us.

Thousands travel to Mineral Basin, Mary Ellen Gulch and Miller Hill every year for recreation activities like hiking, camping, hunting and skiing.

And visitors use countless maps to navigate the 1,500-acre terrain.

Finding out where private and public property lines are drawn all depends on who drew the map.

Mark Allen, founder of the American Fork Canyon Alliance, is working to update survey maps and property lines for all stakeholders in American Fork Canyon.

"When we first started this project, the question I asked was: 'Who's in charge?' There's a lot of jurisdictions up here," Allen said. "They all play a role in creating accurate maps."

Several stakeholders — including private property owners, Utah County commissioners and representatives from the Uinta-Wasatch-Cache National Forest, Bureau of Land Management and U.S. Forest Service — hiked to Miller Hill on Monday to discuss the best way to update survey maps of the area.

An example of the problem is the road leading to Miller Hill. Although the road is open to the public, there are Snowbird signs welcoming visitors but prohibiting hunting and warning about video surveillance.



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"There's no signage that says you're on a county road," Allen said. "It felt like we were on a private road and trespassing."

The lack of signs and confusing property lines make the area confusing for visitors.

"When they put the map down, I looked at it and I couldn't tell (who owned what). There's no way I could tell with the different lines," said Utah County Commissioner Bill Lee. "It's an issue we need to go forward with and see if we can solve."

The overlapping property lines also frustrate private property owners.

Ted Kimball owns 144 acres near Miller Hill, land claimed by his great-great-grandfather. But the boundaries look more like "pick-up sticks" than "nice, rectangular blocks of property," he said.

"Here, where you've got this giant population that's coming up here to recreate, they want to know where the public land starts and ends," Kimball said.

"If we can get these groups to come together and start talking about planning and what we could do up here, all of a sudden we're planning the future of this canyon with give and take rather than individual agendas," he said.

The problem isn't new.

Francis Eickbush, a retired U.S. surveyor general, works as a property boundary specialist for a private consulting firm in Lindon.

"They don't have one map that everybody has agreed to," Eickbush said. "We've got access into the area from county roads on roads that have been used for decades."

Utahns started claiming parts of American Fork Canyon back in the late 1800s, he said, when whole communities of miners lived in the canyon year-round.

They built the roads and claimed the mines, but sometimes the patented mine claims were registered in the wrong county, even up to the late 1900s, officials said. Or the BLM would survey the land, but the information didn't get passed to the county — and vice versa.



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Even though the survey lines are accurate within a few feet, Allen said, the lack of communication meant property claims piled on top of each other over the years.

"There's a wealth of information that can be used, but it's a matter of making people aware of it and sharing it," said Daniel Webb, a BLM chief cadastral surveyor.

When Snowbird wanted to expand the ski resort into the canyon, one of the main issues was keeping access open to public roads and private property.

In 2015, Allen turned a parcel of land in the canyon into public property, helping halt the Mountain Accord land swap — a proposed trade of National Forest Service land in American Fork Canyon for private land in Little Cottonwood Canyon.

If the swap had been, Snowbird planned to develop American Fork Canyon and put in ski lifts and condominiums near Miller Hill.

"We're trying to protect access, so we hope that Snowbird will be a good partner in this," Allen said. "We've got some good read that they will be, and we can do some things together to create a win-win."

Charles Hansen, of West Valley City, and Kevin Westernskow, of Murray, also traveled to Miller Hill on Monday. Hansen said he visits the canyon often, but the city officials were still nervous about driving along the county road with the private property warning signs.

"We saw these signs Snowbird posted," Westernskow said. "I questioned (Hansen) all the way up here, 'Are we supposed to be out here?'"

Another issue is protecting the canyon's water quality. The abandoned mines leave mineral residues that slowly erode into the water systems, Eickbush explained. But no one takes responsibility for the water quality if the property boundaries aren't clear, he said.

The responsibility to collaborate data and create a complete map of the canyon's property lines boils down to money, time and expertise, Allen said, and working toward "healthy outcomes" instead of adversarial conflicts.

"That's the goal, at the end of the day," he said, "that (stakeholders) will understand the role that they play and they'll rise up to it."



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7. Preserving an American tradition: Maintaining access and increasing opportunities on our public lands

The Hill, Sept. 19 | Rep. Rob Bishop (R-Utah)

Sportsmen are the heart and soul of conservation policy in the United States. In the spirit of the first Chief of the U.S. Forest Service, Gifford Pinchot, our nation values the “wise use of the Earth and its resources for the lasting good of men” through responsible resource management, conservation and recreation.

However, to ensure conservation and economic growth can be created by our federal lands, it is important to have access to outdoor activities on America’s public lands, and to have secure Second and Tenth Amendment rights. That is why Congress should pass the “Sportsmen’s Heritage and Recreational Enhancement (SHARE) Act.” Many of our nation’s sportsmen enjoy access to our public lands, which also makes possible many jobs in the outdoor recreation industry sector. Maintaining access and increasing opportunities on our public lands will help ensure our natural resources are conserved in perpetuity, and helps sustain good, family supporting jobs for millions of Americans.

American sportsmen annually fund our nation’s legacy of conservation through a “user-pays, public-benefits” system, which provides millions of dollars toward the preservation of our lands and natural resources. In 2015, hunting and recreational shooting activities alone generated \$823 million to support the conservation and rehabilitation of public land, and provide more than 80 percent of the annual funding for state fish and game agencies. America needs more hunters and recreational shooters to ensure the sustainability of this system.

In addition to supporting conservation, our nation’s sportsmen create and sustain outdoor recreation jobs, ensuring economic stability and income for millions of American families. According to the Outdoor Industry Association, sportsmen annually generate \$65.3 billion in federal tax revenues, a combined \$59.2 billion in state and local taxes and 7.6 million American jobs. These jobs are in a diverse assortment of fields ranging from game management to manufacturing that support hard-working American families across the country.

Unfortunately, federal agencies like the Forest Service and the Bureau of Land Management continue to restrict access to public lands for hunting, fishing and recreational shooting. For



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many Americans, our public lands are where they have practiced these activities for decades, and remain some of the only locations where they can recreate safely and affordably. Reliable public access to these areas must remain a priority. The SHARE Act safeguards access to our public lands, and features provisions designed to ensure that federal agencies actively work to sustain and expand these opportunities for Americans.

Outdoor sporting activities are deeply engrained in the fabric of America's culture and heritage. Values instilled by these activities are passed down generation to generation, and these values ensure that our nation's resources are conserved, economies grow and families thrive. The SHARE Act preserves and enhances these virtues.

With its passage, a much-needed step is advanced to safeguard these opportunities. Without it, conservation of these lands will diminish and American outdoor traditions – and the jobs and economic opportunities they support – will remain threatened.

Bishop is chairman of the House Committee on Natural Resources.

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E&E/NATIONAL NEWS – TOP STORIES

1. **Shrink at least 4 national monuments and modify a half-dozen others, Zinke tells Trump**

The Washington Post, Sept. 18 | Juliet Eilperin

Interior Secretary Ryan Zinke has recommended that President Trump modify 10 national monuments created by his immediate predecessors, including shrinking the boundaries of at least four western sites, according to a copy of the report obtained by The Washington Post.

The memorandum, which the White House has refused to release since Zinke submitted it late last month, does not specify exact reductions for the four protected areas Zinke would have Trump narrow — Utah's Bears Ears and Grand Staircase-Escalante, Nevada's Gold Butte, and Oregon's Cascade-Siskiyou — or the two marine national monuments — the Pacific Remote Islands and Rose Atoll — for which he raised the same prospect. The two Utah sites encompass a total of more than 3.2 million acres, part of the reason they have aroused such intense emotions since their designation.



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The secretary's set of recommendations also would change the way all 10 targeted monuments are managed. It emphasizes the need to adjust the proclamations to address concerns of local officials or affected industries, saying the administration should permit "traditional uses" now restricted within the monuments' boundaries, such as grazing, logging, coal mining and commercial fishing.

If enacted, the changes could test the legal boundaries of what powers a president holds under the 1906 Antiquities Act. Although Congress can alter national monuments easily through legislation, presidents have reduced their boundaries only on rare occasions.

The memorandum, labeled "Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act," shows Zinke concluded after a nearly four-month review that both Republican and Democratic presidents went too far in recent decades in limiting commercial activities in protected areas. The act, signed into law by President Theodore Roosevelt, gives the president wide latitude to protect public lands and waters that face an imminent threat.

"It appears that certain monuments were designated to prevent economic activity such as grazing, mining and timber production rather than to protect specific objects," the report reads, adding that while grazing is rarely banned "outright," subsequent management decisions "can have the indirect result of hindering livestock-grazing uses."

To correct this overreach, Zinke says, Trump should use his authority under the Antiquities Act to change each of the 10 sites' proclamations to permit activities that are now restricted. These include "active timber management" in Maine's Katahdin Woods and Waters; a broader set of activities in New Mexico's Organ Mountains-Desert Peaks and Rio Grande del Norte; and commercial fishing in the two Pacific Ocean marine monuments, as well as in one off the New England coast, Northeast Canyons and Seamounts.

In most of his recommendations, Zinke suggests Trump amend the existing proclamations "to protect objects and prioritize public access; infrastructure upgrades, repair and maintenance; traditional use; tribal cultural use; and hunting and fishing rights."

The White House is reviewing the recommendations and has not reached a final decision on them. At several points, the memo bears the marker "Draft Deliberative — Not for Distribution."

In an email Sunday, White House spokeswoman Kelly Love said she would not discuss in detail a review that is still underway: "The Trump Administration does not comment on leaked



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documents, especially internal drafts which are still under review by the President and relevant agencies.”

The majority of the monuments listed in the report were established by either President Bill Clinton or President Barack Obama, but the two Pacific Ocean sites were created by President George W. Bush and later expanded by Obama.

“No other administration has gone this far,” Kristen Brengel, vice president of government affairs for the National Parks Conservation Association, said of the Trump White House in an interview. “This law was intended to protect places from development, not promote damaging natural and cultural resources.”

The secretary urges Trump to request congressional authority “to enable tribal co-management of designated cultural resources” in three ancestral sites: Bears Ears, Rio Grande del Norte and Organ Mountains-Desert Peaks.

At the same time, he proposes not only shrinking the boundaries of Bears Ears but requesting that Congress make less-restrictive designations within it, “such as national recreation areas or national conservation areas.” The monument, which contains tens of thousands of cultural artifacts, has become the most prominent symbol of the issues surrounding the Antiquities Act.

Yet Zinke also suggests the administration explore the possibility of establishing three new national monuments that would recognize either African American or Native American history. These include Kentucky’s Camp Nelson, an 1863 Union Army outpost where African American regiments trained; the home of murdered civil rights hero Medgar Evers in Jackson, Miss.; and the 130,000-acre Badger-Two Medicine area in Zinke’s home state of Montana, which is considered sacred by the Blackfeet Nation.

“This process should include clear criteria for designations and methodology for meeting conservation and protection goals,” he writes of these potential designations, adding that this course should be “fully transparent” to allow for public input.

Trump signed an executive order in April directing Zinke to examine any national monument created since Jan. 1, 1996, and spanning at least 100,000 acres. The secretary ultimately included 27 of them, including Katahdin, which is roughly 87,500 acres.



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Before submitting Zinke's report to the White House in August, Interior had already announced that six of the monuments under scrutiny would remain unchanged. Zinke's memorandum is silent on the fate of the remaining 11 monuments, including Papahanaumokuakea, which Bush created but Obama expanded to more than 582,578 square miles of land and sea in the northwestern Hawaiian Islands.

Conservative Republicans, including House Natural Resources Committee Chairman Rep. Rob Bishop of Utah, have long been critical of how presidents have used the Antiquities Act. Speaking to reporters last month, Bishop said that the law was not intended "to appoint the president as a dictator" and that federal officials needed to be more respectful of what state lawmakers and local residents thought of protecting areas near their communities.

Ethan Lane, who directs the Public Lands Council at the National Cattlemen's Beef Association, said in an interview that what administration officials are doing is "going back in to look at these designations and ensuring that groups that are significantly impacted are heard. . . . They're going back and fixing what is wrong with a pretty hurried and nontransparent process."

Grand Staircase-Escalante, which Clinton designated in 1996, later led to a land exchange between Utah and the federal government that was ratified by Congress and incorporated a \$14 million buyout of 17 leases held by Andalex Resources Inc. within the monument's boundaries.

Zinke's report notes that the site contains "an estimated several billion tons of coal and large oil deposits" and that the limits of motorized vehicle use there "has created conflict with Kane and Garfield Counties' transportation network."

In the case of the Pacific Remote Islands, the memo notes that before Bush protected it in 2009 "there were Hawaiian and American Samoan longliners and purse seiners vessels operating."

National Geographic explorer in residence Enric Sala, who has conducted scientific surveys in the Pacific Remote Islands Marine National Monument, said in an email that any effort to restart commercial fishing within its boundaries "would not only harm the ecosystem the monument is supposed to protect, but also its ability to help replenish tuna fisheries around it."

While concerns about ranching are raised more frequently than any other objection in the report, Zinke also writes that "border security is a concern resulting from the designation" of Organ Mountains-Desert Peaks near New Mexico's border with Mexico. Both the Homeland Security



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Department and the Pentagon should assess risks associated with the monument, he suggests, given the proximity of nearby military installations.

U.S. Customs and Border Protection issued a letter in January 2014, before the site was designated, saying it would not impede security and would “significantly enhance the flexibility” of agents patrolling a five-mile strip along the border that was then an official wilderness study area.

Changing the way these monuments are managed, as well as their size, is likely to spur a range of legal challenges. Both Trump’s executive order and the report highlight the importance of protecting sites though “the smallest area compatible with the proper care and management of the objects to be protected.”

“Throughout the review, the Secretary has seen examples of objects not clearly defined in the proclamation,” the report reads. “Examples of such objects are geographic areas, ‘viewsheds,’ and ‘ecosystems.’”

And in Katahdin, which is managed by the National Park Service, the secretary proposes amending its proclamation “to promote a healthy forest through active timber management.”

Lucas St. Clair, whose family’s foundation donated the land to the federal government last year to create the monument, said he did not understand why the administration would be seeking changes since the Park Service already has the right to cut trees to maintain the property and protect visitors.

“We need to look through the lens of protecting the conservation and recreational values of the monument. I’m not sure if timber management does that,” he said.

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2. **Zinke’s fire memo calls for aggressive forest thinning**

High Country News, Sept. 18 | Elizabeth Shogren

As the West contends with a big wildfire season, Interior Secretary Ryan Zinke urged his staff to take aggressive action to prevent wildfires. His memo calls on managers to “think differently” about reducing the accumulation of dense vegetation. He wants vegetation cleared if it



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encroaches on roads or buildings, and dead trees removed if they can spread fire to valuable property or beyond the boundaries of parks, refuges or other Interior Department lands.

Forest fire experts say Zinke gets some things right in his memo but caution that its goal—to stop and prevent forest fires—is unattainable and not even desirable. They say Zinke's memo and accompanying press release perpetuate the public's misperception about fire by suggesting that by thinning forests, forest managers can avoid or snuff out forest fires.

"We've been failing at that for 120 years," says Andrew Larson, associate professor of forest ecology at the University of Montana. "Zinke is a smart guy; he picks battles he can win. It surprises me he's making a promise I don't think he can deliver on."

Wildfires have burned more than 8 million acres this year, far exceeding the annual average over the last ten years. In Montana, Zinke's home state, drought-fueled wildfires scorched nearly 1.3 million acres, about four times the average over the past decade. Fire severely damaged a historic dormitory in Glacier National Park's Sperry Chalet.

Zinke's memo states: "It is well settled that the steady accumulation of vegetation in areas that have historically burned at frequent intervals exacerbates fuel conditions and often leads to larger and higher-intensity fires."

That's accurate, Larson says, but what's missing is the reason that forests are choked with vegetation. "The problem with fuels is that we've suppressed fire," Larson says. "It's a problem we've created for ourselves." Zinke's memo advocates limiting fire in the future, which will continue this problem.

More aggressive thinning in low-elevation forests near communities could limit the damage to homes and other structures, Larson says. It also could minimize the severity of future fires in those areas, so that more trees survive those fires.

But the thinning can't prevent fires in those areas. And the vast majority of the acreage burned in Montana this year is in higher elevations and wilderness areas, where thinning wouldn't be practical or appropriate, experts say.

There are more omissions from Zinke's memo. For example, the memo doesn't mention the best tool forest managers have to minimize fuels and restore forests: prescribed burns. And the biggest factors fueling Western wildfires—weather and climate—were entirely absent: "The



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scientific community knows with such great certainty the overriding importance of weather and climate as the primary drivers of Western forest fire regimes,” says Larson. “Fuels are important too. But if we’re only focused on fuels we’re missing the big driver.”

Also absent from Zinke’s message is the major role climate change plays in Western forest fires. In a groundbreaking study published last October, scientists estimated that nearly half of the acreage burned in Western forests over the last three decades could be attributed to human-caused climate change. Under climate change, summers in the West are projected to become increasingly warmer and drier, increasing the frequency of severe wildfire years. Philip Higuera, an associate professor of fire ecology also at the University of Montana, says: “If our policies don’t acknowledge the role that climate plays in driving these large wildfires seasons like we’re seeing this year, the policies we develop are going to be misguided.”

The professors also take issue with Zinke’s characterization of fire in the West as “catastrophic.” Many Western species have life cycles that are dependent on fire. For example, at higher elevations, the cones from lodgepole pines don’t open without fire, meaning the trees can’t propagate themselves.

There’s no question that fires can be catastrophic when they’re close to communities and destroy homes or buildings. “But when they’re not doing that, they’re doing a really important service and playing an important function in ecosystems,” Higuera says. “If we value landscapes that include national processes, we have to learn how to live and work with having fire in the landscape.”

One important role that fire plays might resonate with Zinke, a hunter who is determined to make public lands more hospitable for sportsmen. Hunters often complain when smoke and flames keep them from their favorite hunting areas. But Larson takes the longer view. His favorite elk hunting spot in Montana’s Bob Marshall Wilderness is within the area burned by the Rice Ridge Fire, and Larson won’t be able to hunt there this fall. But in coming years, as the forest regenerates, elk will be lured to that very place because tasty forbs that elk love will flourish in the bright sunlight. “After a few years, fires give us great big game habitat,” he says.

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3. Crossing Borders: The Colorado River - One Ecosystem, Many Managers

Utah Public Radio, Sept. 19 | Julie Kelso

As you float down the Colorado River from Glen Canyon Dam to Lake Mead you may not realize that river right, the north side of the river, is owned and managed by the National Park Service and river left is managed by several groups including the Hualapai and Havasupai Indian nations.

Hualapai and surrounding tribes have inhabited the Grand Canyon region since 700 AD. They survived harsh desert conditions using their knowledge of plants and wildlife behavior, for example using their understanding of the seasonal movements of antelope, sheep and deer to procure food.

Today Hualapai continue to practice sacred ceremonies and collect cultural resources within the canyon. But dams and other development have altered the riparian plant community which now includes many invasive species.

Ka-Voka Jackson, a member of the Hualapai tribe and graduate student at the University of Nevada, Las Vegas is currently researching methods to remove invasive plants while reestablishing native plants that are culturally important

"To me the Colorado River is really sacred and held really close in my heart because on my reservation we grew up along the Colorado River in the Grand Canyon," she said. "And so being able to work in Glen Canyon National Recreation area is a really important because I am closer to home and our ancestral lands did extend as far as Glen Canyon, so we have ties to that area."

Tribe and federal agencies have collaborated for decades to manage natural and cultural resources within the Canyon, but cultural and institutional barriers can be much harder to cross than borders drawn on a map.

Ka-Voka and others realized that the perspectives and goals of traditional western scientists often differ from those with local and historical knowledge.

"I think there is a big gap between the traditional ecological knowledge that tribes hold versus the western science, and they don't communicate," she said. "There is a gap in that communication but I think they could hugely benefit each other. The tribes have been living here a very long time,



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so they have a lot of knowledge and it's often not brought into the science world. There are a lot of reasons for that. A lot of people who hold this traditional knowledge don't necessarily want to give it to the western scientists because they don't want it to be exploited, it can be sold as a product, or they don't want it used out of context. We hold a lot of this knowledge very close. I don't want to pressure these knowledge holders to give up their knowledge, but I do want them to carefully use it in a way that can benefit everybody."

Ka-Voka describes one of the paradoxes Native Americans face when trying to preserve cultural resources.

Former Hualapai cultural resources director Loretta Jackson-Kelly explained the dilemma tribes face when trying to preserve ecosystems and landscapes while also protecting their sacred significance.

"In establishing traditional cultural properties, you want to make sure that is it written and that someone can come back and reference what it means for the tribe," Jackson-Kelly said. "But at the same time when you release confidential information - that is esoteric knowledge of tribes that is held sacred then you cannot release that type of information. A lot of the tribes have this conflict in management because how can you manage a resource and justify its preservation when you can't release the significance of that resource."

Jackson-Kelly worked with the Glen Canyon Adaptive Management Program, an organization - and process - designed for the cooperative integration of dam operations, recreation, and resource conservation. Tribes throughout the region, the Bureau of Reclamation and other stakeholders have worked since 1991 to implement strategies that will preserve both cultural and ecological resources.

"When we work with the scientists, you know western science is based on what you learn in academics," she said. "Whereas from a Native American perspective we didn't have universities and we didn't go to college. This was all handed down to us through experience, from generation to generation through oral histories, and oral stories. We have already gone through all the experiments over time to arrive at this point. Regardless of whether we have degrees or not, because we are a land-based people we have studied the land."



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Since Glen Canyon's construction, an annual monitoring trip is conducted by each tribe in the region, to assess archeological and botanical resources. These river trips serve to inform scientists and river managers, but they also are an opportunity for the Hualapai to continue the tradition of passing ecological knowledge from one generation to the next. Ethnobotanist for the tribe, Carrie Cannon, described the significance of these trips.

"To me the goal is more about the sharing of traditional ecological knowledge so that the knowledge tribal members possess about the landscape doesn't disappear, or fade away, or die out," Cannon said. "There have been all these things that have happened in our history where essentially Native Americans have been forced to assimilate, and join the mainstream, but tribal people have their own language and ideologies and their own unique way of looking at the world. Even the taxonomic systems are different than the Linnaean western science system. The names for plants tell you something about the plant - they tell you a story, so even embedded in the language is ecological knowledge."

I spoke with ecologist and member of the adaptive management group Larry Stevens, about how he views the differences in perspective of western scientists and those of indigenous people.

"As big schism has actually appeared - in the west, we tend to think of managing for conservation and restoration towards a pristine condition without human influence," he said. "Indigenous tribes and Asian cultures, as far as I can tell, feel that man has a role in managing, our human purpose is to improve nature - very different than the western perspective."

Stevens and the Spring Stewardship Institute have worked with communities across the globe, including tribes of the southwest to assess the integrity of spring ecosystems, which are universally recognized as an important, socio-economic resource. Through the development of standard protocols and a password-protected database, they have created a tool, which allows the Hualapai to assess water resources without having to share the exact locations of the springs.

"If they are concerned with some issue of groundwater quality, or declining aquifers, or species of concern with neighbors, they can talk in the same language about it. That's the beauty of this database is it allows neighbors to talk about springs with a common framework."

Collaborations between the federal government, state agencies, ecologists and tribes had a rough start, but through many heated arguments and discussions, tribal knowledge has been included in



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the management of Grand Canyon resources. For example, all parties influenced groundbreaking research to use experimental high flow releases to help manage riparian habitat along the Colorado.

As tribes and managers face a future of increased temperatures and increased water demand, collaborative approaches to resource conservation will be the norm.

The UPR Original Series "Crossing Borders" is a yearlong storytelling project between UPR and the USU Office of Global Engagement - providing services for international students and scholars; and facilitating study abroad opportunities for students and faculty. [Details found here.](#)

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4. **LAW: Feds on notice as court smacks down climate review for coal**

E & E News, Sept. 19 | Ellen M. Gilmer

A major court decision dressing down the federal government for "irrational" consideration of the climate impacts of coal leasing stands to reverberate throughout the Trump administration.

The 10th U.S. Circuit Court of Appeals last week ruled that the Bureau of Land Management failed to adequately consider the greenhouse gas emissions of four large coal leases in Wyoming's Powder River Basin.

A three-judge panel rejected BLM's "perfect substitution" theory, a recurring agency argument that suggests federal coal leasing has no significant impact on the climate because steady U.S. demand means that if coal isn't mined on federal land, the same amount will be mined elsewhere.

The court said the approach "contradicted basic economic principles" and violated the National Environmental Policy Act (Greenwire, Sept. 15).

Now the ruling is expected to feature prominently in other challenges working their way through agencies and the courts. It provides new ammunition for critics who scrutinize federal environmental reviews for not looking closely enough at climate change.

"This opinion is significant because it means that future federal agencies cannot just rest on these questionable assumptions and will have to do meaningful analysis as to the actual greenhouse gas



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emission effects from their leasing decisions," said Jayni Hein, policy director at New York University School of Law's Institute for Policy Integrity. "They can't just conclude that there's no net effect."

The decision also puts BLM on notice. In the near term, the agency must revise its 2010 environmental impact statement for the Wright Area leases at issue. More broadly, the court's rebuke is expected to spur the agency to, at the very least, show its work more clearly in other analyses.

"The tools are there, and the courts have said, 'You're not going to get away with just sweeping all these impacts under the rug,'" said WildEarth Guardians attorney Samantha Ruscavage-Barz, who represented environmentalists in the case. "So I would hope that they would take it seriously and do the analysis."

"That's the goal of NEPA," she added. "It's supposed to inform your decisionmaking and also inform the public about the impacts of your decision."

BLM has not yet commented on the ruling.

Inside the decision

The 10th Circuit's opinion was unusually biting. It started with a critique of BLM's administrative record for the coal leases, finding that the agency didn't have enough information to support its conclusion that any forgone federal coal production would be replaced by private development.

While the court could have stopped there, the opinion went a step further, scorching the heart of BLM's analysis.

"Even if we could conclude that the agency had enough data before it to choose between [leasing and not leasing], we would still conclude this perfect substitution assumption [is] arbitrary and capricious because the assumption itself is irrational (i.e., contrary to basic supply and demand principles)," said the opinion, written by Judge Mary Beck Briscoe, a Clinton appointee.



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The court's critique focused on the magnitude of the Wright Area leases, which hold 2 billion tons of coal and extend the life of two massive surface mines that account for some 20 percent of U.S. coal production.

Contrary to BLM's assertion that coal would simply be mined elsewhere if the leases were nixed, the opinion noted that market forces would likely throw off that theorized swap.

That's because Powder River Basin coal is generally cheaper than varieties produced elsewhere. BLM's analysis suggests replacement coal would likely be mined from outside the basin, but the agency does not account for the price differences, the court said.

Citing U.S. Energy Information Administration data, the opinion noted that "when coal carries a higher price, for whatever reason that may be, the nation burns less coal in favor of other sources. A force that drives up the cost of coal could thus drive down coal consumption."

"Lessened demand for coal results in less use of coal, which results in less impact on the climate," Senior Judge Bobby Baldock, a Reagan appointee, wrote in a concurring opinion.

The decision marks the first time an appellate court has tackled the "perfect substitution" theory for coal leasing head-on. The 8th U.S. Circuit Court of Appeals was similarly unpersuaded in a 2003 case dealing with rail transport for coal. And a district court in Colorado also spurned the argument in a 2014 lawsuit, but that case was never appealed.

Environmental lawyers, who have taken aim at the theory for years, cheered the 10th Circuit's conclusion.

"The court recognized that BLM's been using this flawed logic just to get out from doing this analysis and disclosing to the public the impacts of a decision like this — a major leasing decision that sets the course for energy for the next decade or more," WildEarth Guardians' Ruscavage-Barz said.

Sierra Club attorney Nathaniel Shoaff, who was also involved in the case, noted that a similar substitution analysis is included in every coal lease review BLM has handled over the past several years.



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"Every one of those decisions is now called into question by this decision," he said.

Many other coal development approvals also fall under the 10th Circuit's jurisdiction.

Ground shifting

The ruling is a milestone in the ongoing evolution of legal precedent on NEPA and climate change.

"We are seeing some significant victories in the courts specifically on how agencies need to better account for the climate change impacts of their decisions," said Hein of the Institute for Policy Integrity, which filed an amicus brief in the case criticizing BLM's analysis.

Indeed, courts have been especially active on climate issues over the past month. In August, a district court in Montana ruled that federal regulators did not closely consider indirect and cumulative climate impacts from a coal mine expansion.

A week later, the U.S. Court of Appeals for the District of Columbia Circuit faulted the government for not doing in-depth analysis of the downstream greenhouse gas emissions of a natural gas pipeline in the Southeast.

The cases come as the Trump administration moves away from Obama-era climate policies. Earlier this year, the White House Council on Environmental Quality rescinded guidance directing agencies to consider broad climate impacts in environmental reviews (Greenwire, Sept. 1).

Critics have suggested that some judges are interpreting NEPA too broadly — even reaching beyond the scope of the statute to land on a climate-friendly conclusion.

Norton Rose Fulbright attorney Bob Comer said last week's decision seems to stray into out-of-bounds "flyspecking" territory — scrutiny of inconsequential details of an environmental review.

"It expands the concept of environmentally informed decisionmaking by practically redefining the minimums for what constitutes flyspecking and then changes the fundamental nature of the action under review," said Comer, who previously served in the solicitor's office at the Interior Department.



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Comer and many other critics say climate impacts from burning coal fall outside the proper scope of BLM's NEPA analysis because other federal- and state-level decisionmakers have authority over the power plants where those emissions will eventually occur.

Bracewell attorney Kevin Ewing cautioned that expansive interpretations of NEPA effectively ask land management agencies like Interior to act as climate science agencies. They don't have the expertise, he said, and, moreover, the linkage between site-specific emissions and follow-on climate effects is still too tenuous to permit confident analysis.

"Courts may exhort, but at the end, it does not increase the ability of the agencies to find certainty where there isn't any, or find predictability where there isn't any," he said. "And that it is an inherent limitation we still face when doing NEPA analysis."

Other recent court decisions have recognized such limitations, deferring to federal agencies in their determination of the proper scope and approach to climate analysis in NEPA reviews.

A week before the D.C. Circuit's recent pipeline decision, for example, a panel of judges on the same court upheld the Department of Energy's decision to forgo quantitative analysis of indirect climate impacts from liquefied natural gas exports. The court deferred to the agency's determination that such analysis would be speculative and unreliable.

Comer said if he were still at Interior, he would recommend that the agency challenge last week's coal ruling.

"I don't think that this decision is one that will stand the test of time in review in other circuits, or were it to be reviewed by the Supreme Court or in an en banc panel of the 10th Circuit," he said.

He added that he believes the Trump administration is on the right track with recent efforts to streamline NEPA reviews. While attempts to expand analyses to shield agencies from legal challenges could be in tension with recent page limits set by Interior, Comer said BLM could instead avoid future unfavorable court decisions by issuing policy guidance on NEPA regulations that establishes a narrower scope.

What's next?



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Back in the Powder River Basin, the immediate impacts of last week's decision are unsettled.

The appeals court ordered BLM to revise the EIS, but it declined to scrap the underlying leases. Instead, it remanded the case for the U.S. District Court for the District of Wyoming to sort out the next steps.

The 10th Circuit opinion noted that because the issue is "fairly narrow," the district court might opt to vacate BLM's approval or "fashion some narrower form of injunctive relief."

Representatives from the National Mining Association and Peabody Energy Corp., one of the primary leaseholders, said they were glad the leases were not vacated and expressed confidence that the district court will ultimately allow them to move forward. Three of the leases at issue are currently being mined.

Environmental groups, meanwhile, plan to keep pushing to halt development.

"That's a pretty big violation, not just of the words of the law, but of the public trust," WildEarth Guardians climate and energy campaigner Jeremy Nichols said. "This is not just Arch Coal's resource; it's not Peabody's resource; it's the American public's resource, so I would hope that we'd at least get a fair shot to make our case."

He noted, however, that the Wyoming court may be more sympathetic to BLM and the mining companies.

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5. PUBLIC LANDS: Greens say Trump admin must keep drilling away from 15 sites

E & E News, Sept. 19 | Scott Streater

A conservation group wants the Trump administration to keep oil and natural gas drilling, mining and other development away from more than a dozen federal sites, including two national monuments Interior Secretary Ryan Zinke has recommended cutting in size.



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The Wilderness Society, in a [report](#) released today titled "Too Wild to Drill," lists 15 federal landscapes managed by the Bureau of Land Management, the Forest Service and other agencies that contain critical wildlife habitat and cultural, historical and recreation values. But each is at "high risk" of harm from oil and gas drilling, mining activity, pipeline construction and other development, the report says.

"Some places are simply too wild to drill," Jamie Williams, the Wilderness Society's president, said in a statement. "The federal government must resist pressure from energy companies and other special interests to open up our last remaining wild places for development."

Among the areas the Wilderness Society says should remain closed to development is the 19.3-million-acre Arctic National Wildlife Refuge (ANWR) in Alaska.

Williams wrote in an introduction to the report that moves by the Trump administration to "open the Arctic National Wildlife Refuge to drilling and shrink or eliminate protected lands around the country underscore how serious this threat is."

The Independent Petroleum Association of America criticized the report as "misguided," arguing that it makes the incorrect assumption that "drilling largely takes place in sensitive areas."

But Zinke last spring signed a [secretarial order](#) directing the Interior Department to open up development in ANWR, where the Obama administration had put a leasing moratorium in place.

Interior has since quietly directed the Fish and Wildlife Service to revise a rule that would allow seismic testing for oil and gas development on the refuge's northern plain (Greenwire, Sept. 18).

That doesn't mean oil and gas companies are thirsting to plant new wells in such a remote landscape, analysts have said (Energywire, Aug. 4).

But even if it does, "[d]rilling operations in and around the sites listed in the Wilderness Society report can be done in ways that protect environmentally-sensitive landscapes," Dan Naatz, IPAA's senior vice president of government relations and political affairs, said in an emailed statement.

"We are very confident that in this high-tech industry, which the oil and gas industry is now, we can do these activities and protect the environment and reduce the footprint of drilling



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operations," he added. "We're very proud of our record, and the footprint continues to get smaller."

Monuments at risk?

The 40-page Wilderness Society report also lists the Mojave Trails National Monument in California and the Grand Staircase-Escalante and Bears Ears national monuments in Utah — all three of which were included in Zinke's recently completed monthslong review of 27 monument sites.

Zinke submitted to President Trump last month a report with his recommendations to redraw the boundaries of a "handful" of unspecified national monuments (Greenwire, Aug. 24).

The report has yet to be made public officially.

But a leaked copy of the report revealed Zinke recommended that the president take steps to reduce the size of the 1.9-million-acre Grand Staircase-Escalante and 1.35-million-acre Bears Ears national monuments (Greenwire, Sept. 18).

The leaked document does not include specific cuts or maps to identify areas for reductions.

"Removing protections for Bears Ears National Monument would pave the way for oil and gas drilling and potash and uranium mining, inevitably destroying some of the area's world-class cultural and natural resources," the Wilderness Society report says.

The same goes with the Grand Staircase-Escalante National Monument, the report says.

"The fossil fuel industry has long eyed the coal resources found in the region, and it has had the support of Utah politicians, who have vocally opposed conservation efforts on public lands within the state," it says.

But as with ANWR, the industry's appetite to drill in those places appears low (Energywire, Aug. 23).

Other 'pristine places'



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The Wilderness Society report highlights other areas it considers to be at risk, including the watershed around Grand Canyon National Park.

Environmentalists pushed former President Obama in the closing months of his administration to designate a national monument protecting 1.7 million acres of the Grand Canyon's watershed from mining and other development.

While no monument was designated, the Obama administration imposed a 20-year ban on new uranium mining claims in more than 1 million acres surrounding Grand Canyon National Park in 2012 (Greenwire, March 21, 2013).

But the Wilderness Society report notes that "there has been a call to open the area to uranium mining, rolling back" the moratorium on new mining leases.

Uranium mining "in this sensitive and stunningly beautiful area would destroy crucial wildlife habitat, devastate the tourism-based economy and put drinking water for the 25 million people who depend on the Colorado River at risk," the report says.

Other areas listed in the report include Badger-Two Medicine in Zinke's home state of Montana. Lewis and Clark National Forest manages the 130,000-acre site.

Obama's Interior Department in January canceled the remaining oil and gas leases that had been issued years ago in the Badger-Two Medicine area, which is considered sacred by the Blackfeet Nation (E&E News PM, Jan. 10).

The Wilderness Society report notes that "two oil and gas companies are suing the government" over the lease cancellations. The group says in the report that it fears the Trump administration "could also fail to defend the case or even enter into a sweetheart settlement reinstating these illegal leases."

Zinke, the report says, "should stand with the Blackfeet and Montanans and ensure that the area is not desecrated by energy companies."

"We must set aside our wildest, most pristine places for future generations to enjoy," Williams said in his statement. "Once they're gone, we can never get them back."



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But in the leaked national monuments document Zinke sent to Trump, he endorsed establishing at least three new monuments — including one protecting the Badger-Two Medicine area.

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6. FEDERAL AGENCIES: Leak crackdown: 'One man's policy is another man's gossip'

E & E News, Sept. 19 | Hannah Northey

Many federal employees preparing for Trump administration training this week on combating information leaks are taking the effort in stride.

"I'd argue there's a feeling of bemusement among the people I'm talking to," said a Department of Energy staffer who asked to remain anonymous. "They're thinking, 'What the hell is this? Just another aspect of this administration.' If it makes them sleep better at night, so be it."

DOE, the Interior Department, U.S. EPA and the Nuclear Regulatory Commission were among more than 50 agencies directed by the White House to conduct an hourlong training session to prevent leaks of "classified" and "controlled unclassified" information.

An NRC spokeswoman said training will comply with National Security Adviser H.R. McMaster's memo to agency chiefs and also emphasize whistleblower protections. The memo was first made public by BuzzFeed.

"I'm told we are reiterating the existing and long-standing obligations of the staff under applicable laws, executive orders, regulations and policy," NRC spokeswoman Holly Harrington said. "The NRC staff members are well trained in the requirements themselves, so this is simply a focused reminder on their obligation to follow the training they have been provided."

While DOE and Interior declined to comment on McMaster's memo, EPA sent an internal email to staff outlining "unauthorized disclosure training" slated for this week (Climatewire, Sept. 19).

Trump's energy and environmental agencies have seen ongoing leaks in recent months of unclassified information, flustering some Republican lawmakers.



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House Natural Resources Chairman Rob Bishop (R-Utah) yesterday called for an immediate investigation after a leaked memo from Interior Secretary Ryan Zinke made its way to the press, revealing the agency's intent to shrink as many as six national and marine monuments (Greenwire, Sept. 18).

"The fact this was leaked is troubling and merits an immediate and thorough investigation," Bishop said. "The president should have the time to evaluate the secretary's review and develop actions without the encumbrance of incomplete information being leaked to the press."

Multiple former agency officials said the governmentwide training on leakers appears to be a first.

"I don't recall seeing any direction from the White House to DOE or any other agency to provide this specific training," said Jeff Navin, DOE's deputy chief of staff during the Obama administration and co-founder and partner at Boundary Stone Partners.

Navin said it's not uncommon for federal workers handling classified information to be reminded of the importance of the clearances they hold, pointing to sensitive oversight of nuclear weapons as an example.

McMaster's memo, he added, appears to distinguish between federally protected information that's classified or "controlled unclassified" and information that's politically embarrassing or gossip. Left out, for example, would have been a leaked report of a grid reliability study Energy Secretary Rick Perry requested earlier this year, he said.

"The briefing McMaster is talking about wouldn't have impacted things like the gossip we hear from the White House or an early draft of a grid report finding its way to a reporter," Navin said.

The DOE staffer was less certain, wondering whether career employees would face questions about what constitutes sensitive information that's not classified.

"One man's policy is another man's gossip," the staffer said.

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7. **LAW: Enviro restart bid for broad review of coal leasing program**

E & E News, Sept. 19 | Ellen M. Gilmer

Environmental groups that successfully pushed the Obama administration to conduct a broad review of the federal coal leasing program are taking up their fight again as the Trump administration continues its retreat from the plan.

In a legal [filing](#) to the U.S. Court of Appeals for the District of Columbia Circuit late last week, the Western Organization of Resource Councils and Friends of the Earth argued that the Trump administration should be required to restart a programmatic environmental impact statement (PEIS) process initiated under President Obama.

The environmental groups first went to court in 2014 to push the Interior Department to conduct the PEIS to re-evaluate coal leasing's environmental impacts and ensure taxpayers are getting a fair return. A district court dismissed their case, and they appealed to the D.C. Circuit. Then-Interior Secretary Sally Jewell responded by pausing new federal coal leasing and launching the review.

But the Trump administration scrapped the moratorium and backpedaled from the PEIS process earlier this year as part of the president's "energy independence" executive order designed to bolster domestic fossil fuel production.

While separate litigation challenges the reversal itself, WORC and Friends of the Earth promptly reactivated their lawsuit aimed at initiating the PEIS in the first place. They accuse Interior of "failing to conduct an adequate analysis of the environmental effects, including climate change-related effects, of the federal coal leasing program" in violation of the National Environmental Policy Act (Greenwire, May 30).

"Transparency about environmental costs in agency decisionmaking is NEPA's fundamental objective," they told the D.C. Circuit last week. "And, here, asking Interior to honor its NEPA obligation requires no more than the program-level update the agency itself promised when it first issued this PEIS several decades ago."

They're particularly concerned that Interior has never taken a broad look at the leasing program's climate impacts. The last PEIS for federal coal leasing was completed in 1979, and the agency



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modified the program in 1983. Since then, Interior has conducted project- and site-specific reviews as it approves individual coal leases and permits.

"Interior's last statement on the coal leasing program's climate costs came in 1979, when its PEIS — in the space of one page out of 1300 — declared climate change a speculative concern for the 'next few centuries' with effects too 'uncertain' to quantify absent further scientific research," the groups said. "Thirty-eight years later, tens of thousands of peer-reviewed scientific studies have identified the causes and consequences of continued atmospheric warming and showed that coal combustion is the single greatest contributor to the growing concentration of greenhouse gases in the atmosphere."

Interior is due to respond to the brief in November.

The environmental groups' brief was filed the same day another appellate court rebuked Interior for failing to take a close look at climate impacts from a set of leases in Wyoming (Energywire, Sept. 18).

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8. **LAW: In win for tribe, court says wind farm counts as 'mining'**

E & E News, Sept. 19 | Ellen M. Gilmer

When is a wind farm also a mining operation? When it's scraping up rocks in Indian Country and using them.

That's the upshot of a federal court decision siding with the Osage Nation in a battle over whether wind development atop Osage land in Oklahoma requires federal and tribal approval.

In a unanimous opinion yesterday, the 10th U.S. Circuit Court of Appeals ruled that Osage Wind LLC violated federal law by "mining" the earth to erect commercial wind turbines without a federal permit.

The case stems from complicated land ownership in Indian Country. In the Osage Nation, much of the surface land is privately owned, while what's underground is managed by the U.S. government for the tribe. That means approval for surface activities can go through individual



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landowners, but approval for subsurface activities must go through the tribe and the Interior Department.

In 2010, Osage Wind secured a lease for 8,400 surface acres in Osage County, Okla., to build an 84-turbine wind farm. The tribe and the government first raised concerns in federal court that the development would disrupt oil and gas drilling in the area, but the court threw out the claims.

Osage Wind eventually began site preparation for the wind farm in 2013 and 2014, digging large holes to hold massive cement foundations for the wind turbines. Each foundation measured 10 feet deep and 60 feet in diameter. The company extracted soil, sand and rocks to dig the holes and then crushed the material and used it to fill and cover the excavated sites.

The U.S. government sued over the mineral extraction activities, lost the case and declined to appeal. The Osage Minerals Council — an Osage Nation agency — stepped in and took the case to the 10th Circuit.

The 10th Circuit yesterday sided with the tribe, ruling that the use of the rocks constituted "mining" under federal regulations. The court noted that Interior regulations governing "mineral development" of the tribal subsurface estate should be broadly interpreted to include the excavating activities, especially in light of legal precedent that requires courts weighing laws designed to favor tribes to "liberally construe" any ambiguity in tribes' favor.

"It might be reasonable to adopt the construction favored by Osage Wind, which sets as the definitional boundary the commercialization of the minerals," the opinion said. "But because the phrase 'mineral development' is ambiguous in this regulation, the Indian canon of interpretation tilts our hand toward a construction more favorable to Osage Nation, so we adopt the broader definition of 'mineral development' when construing [Interior regulations]: 'mineral development' includes acting upon the minerals to exploit the minerals themselves."

"On the merits, we hold that Osage Wind's extraction, sorting, crushing, and use of minerals as part of its excavation work constituted 'mineral development,' thereby requiring a federally approved lease which Osage Wind failed to obtain," the court concluded.

Senior Judge David Ebel, a Reagan appointee, authored the opinion, joined by Judge Mary Beck Briscoe, a Clinton appointee, and Judge Gregory Phillips, an Obama appointee.



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The wind farm has already been constructed, but yesterday's ruling allows the tribe to seek damages from the company in future district court proceedings.

Fredericks Peebles & Morgan LLP attorney Jeffrey Rasmussen, representing the tribe, praised the decision as a victory for tribal property rights.

"The company needed to lease the tribal property just like it leased the non-Indian property it was using," he told E&E News in an email. "This should be a cautionary tale for companies that they need tribal consent. But one that was, we believe, obvious because [it was] based on such basic property law. The surprising aspect was that this company took such enormous risk by building without that lease in place."

A lawyer for Osage Wind did not respond to a request for comment.

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9. USGS: Thousands of webpages are gone. Agency blames search tool

E & E News, Sept. 19 | Brittany Patterson

Access to climate data on the U.S. Geological Survey's website has fallen sharply in recent months, flummoxing some scientists and stoking fears that the Trump administration is nixing information about global warming.

Peter Gleick, a climate scientist and co-founder of the California-based Pacific Institute, made waves when he tweeted a series of screenshots Sunday evening comparing the search results for "climate change" and the "effects of climate change" on the current USGS website versus an archived version of the site from December 2016. The older version was found using the Wayback Machine website.

In December, a search for "effects of climate change" garnered 2,502 webpages and 144 data sets. Today, users who search for the same phrase receive an error message: "No results found, please refine or try another search."



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USGS Public Affairs Officer A.B. Wade pushed back against the idea that the Trump administration has censored the Interior Department's science agency or asked the USGS to remove the information from its website.

She said the discrepancy in search results is due to the USGS website's "notoriously bad" search function, despite a yearslong redesign to make information more accessible.

"I don't even have a way to search within our website all news releases I've done about polar bears," Wade said. "We always go to Google."

Gleick, who said he often works with water-use data housed on the USGS site, was trying to access information previously found under the "effects of climate change" section. He said the malfunctioning search function is preventing scientists and the public from accessing important data.

"I have no idea whether all of the information that was available on the December 2016 site is still there somewhere or not," he said. "It's possible that it's just buried and you find it in a different way. ... But if this is part of their redesign, they're not making it easier, they seem to be making it harder."

Some officials say that kind of discrepancy needs more attention, given President Trump's alternative views on climate science. A bill waiting for the signature of California Gov. Jerry Brown (D) would preserve federal data on climate change on outside websites. The move followed several instances in which information disappeared from the site of U.S. EPA and other agencies (Climatewire, May 8).

Among other things, S.B. 51, introduced by California state Sen. Hannah-Beth Jackson (D), would require the California secretary for environmental protection to preserve and make available data "at risk of censorship or destruction by the federal government."

"California is signaling its attempt to limit the effect of the Trump presidency," said Jeff Ruch, executive director of Public Employees for Environmental Responsibility, which helped draft the legislation. "They would literally be the resistance."

According to Ruch, there is no law on the books that prohibits federal agencies from removing data about climate or other issues.



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"There is no law that mandates you have to keep your links active," he added.

Officials at USGS have long known that the website's search tool is not functioning correctly, largely due to technical issues associated with the site's content management system, said Scott Horvath, social media lead for the agency.

The search tool is especially bad at pulling up pertinent results when multiple keywords are used. He said another challenge is that the agency's ongoing content migration is being handled by more than 100 people.

"We're hoping to roll out a new search sometime next month and hoping to clean up the results at the same time," he said in an email. "It's [an] ongoing effort and we're well aware of the issues with results needing improvement."

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10. NATIONAL MONUMENTS: Dems to Trump: 'Reject this sham report'

E & E News, Sept. 19 | Jennifer Yachnin

Democratic lawmakers yesterday accused Interior Secretary Ryan Zinke of dismissing "the voices of the majority" in recommending that President Trump slash the size of a half-dozen monuments and open others to commercial uses.

Both House and Senate lawmakers also urged the White House not to pursue the cuts to monuments, arguing that any effort to redraw those boundaries would be "exceedingly unpopular and very likely illegal."

"We strongly urge the president to reject this sham report," New Mexico Sens. Tom Udall and Martin Heinrich said in a joint statement.

In a private report submitted to Trump late last month and obtained by media outlets including E&E News yesterday (Greenwire, Sept. 18), Zinke called for reducing the boundaries of both the Grand Staircase-Escalante and Bears Ears national monuments in Utah; Gold Butte National Monument in Nevada; and the Cascade-Siskiyou National Monument, which straddles Oregon and California.



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He also proposed cuts to both the Rose Atoll and the Pacific Remote Islands marine national monuments, as well as altering management plans for a handful of other monuments including the Organ Mountain-Desert Peaks and Rio Grande del Norte monuments in New Mexico.

In interviews with E&E News and statements, Democrats roundly criticized Zinke's 120-day review of 27 national monuments, all but one of which included more than 100,000 acres.

In particular, Democrats pointed to Zinke's dismissal of public comments, which he criticized as the work of nonprofit groups that support public lands.

"The Department of Interior's report to the president completely ignores New Mexicans' overwhelming support for the monuments, and doesn't even offer specifics and meaningful data to back up their vague recommendations," Udall and Heinrich said. "It doesn't come as a surprise that local voices were not taken into consideration, since Secretary Zinke declined to attend a town hall meeting on Organ Mountains-Desert Peaks and never even set foot in Rio Grande del Norte."

They added: "It's clear this report is a politically driven attempt by Washington to justify the administration's extreme position that public lands should be privatized, leased or sold to the highest bidder. "

Echoing the New Mexico lawmakers, Oregon Sens. Jeff Merkley and Ron Wyden likewise said that shrinking their state's Cascade-Siskiyou National Monument would "disrespect the voice of the local community," which supported the site's creation in 2000 and expansion in 2016.

"This attack on the Cascade-Siskiyou National Monument is an attack on our American tradition of protecting public lands that are open to all," Merkley said. "Using an unprecedented and legally dubious strategy, President Trump is threatening one of the most biodiverse places in America and ignoring the extensive public process that informed the expansion of the monument. ... This assault on Oregon and our public lands cannot stand."

Merkley and other Democrats argue that while presidents may use the Antiquities Act of 1906 to establish monuments when public lands have cultural, scientific or historic value, it does not grant authority to diminish or rescind monuments.



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Although presidents have reduced monuments on 18 occasions, no president has done so since Congress authored the Federal Land Policy and Management Act of 1976.

"These public lands belong to all Oregonians, and they should remain open to everyone to enjoy and use, not be managed by a memo thousands of miles away in Washington, D.C.," Wyden said.

Key House members weigh in

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, told E&E News that he will work to block any attempt by the Trump administration to alter the monuments, both via legislation and in the courthouse.

"We're going to do what we can in Congress to make this process as difficult as possible. I don't think there's a unilateral authority for the secretary to do this or the president to do this ... by executive order," Grijalva said.

In addition to opposing legislation that would alter the Antiquities Act, Grijalva said he would seek to block the use of federal funds for any changes and would expect fellow Democrats to sign onto friend-of-the-court briefs to intercede in any relevant lawsuits.

"Who are you answering to?" Grijalva asked of the Trump administration, arguing the review was intended to assist the fossil fuel industry. "It certainly isn't the public. It certainly is not the will of the majority of the people in those states. It's not even legally defensible."

Grijalva also accused Zinke of "perverting the concept" of traditional use of public lands by using the terminology to apply to mining, logging and other extractive activities, rather than hunting and fishing, sacred sites or cultural uses.

But House Natural Resources Chairman Rob Bishop (R-Utah) rejected those criticisms, arguing that Zinke listened to local elected officials who have felt ignored during past monument designations.

"Had past administrations not blatantly abused this law, this evaluation process would not have been necessary in the first place. Now that the designation process is being scrutinized, it's even more clear that abuses occurred and real problems were left unresolved or ignored," Bishop said.



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Leak of memo 'troubling' — Bishop

Bishop, who reiterated his plans to reform the Antiquities Act to "prevent future abuses," instead focused on the unauthorized publication of the memorandum.

"The fact that this was leaked is troubling and merits an immediate and thorough investigation. The president should have the time to evaluate the secretary's review and develop actions without the encumbrance of incomplete information being leaked to the press," Bishop said.

Bishop's office did not respond to a clarification about who would conduct the investigation. The White House referred related questions to the Justice Department, which did not respond in time for publication.

But Nevada Rep. Dina Titus (D) accused Zinke of releasing the memo himself.

"Secretary Zinke leaked a memo in the middle of the night because he knows his plan to hack away at monuments like Gold Butte is an overreach opposed by the majority of Americans," she said. "Now we must recommit our effort to protect these precious public lands in the courts and send a strong message to Zinke and Trump to keep their hands off our monuments."

Nevada Sen. Catherine Cortez Masto (D) told E&E News yesterday that Zinke called her a few weeks ago to inform her of his recommendation.

"I wanted to know specifically what he wanted to do with respect to changing the border," Cortez Masto said in reference to the Gold Butte monument.

"I told him I disagree with [changing] it," Cortez Masto said, adding that she has not seen the leaked document. "I am waiting on the specific details, but I made it very clear that I don't think he has the legal authority to do that."

In an interview yesterday on "The Doug Wright Show," Bishop emphasized that the leaked memo is merely a draft and that final decisions on any monument changes have yet to be made.

But he did endorse a suggestion made last week by Utah Gov. Gary Herbert (R), who said Grand Staircase-Escalante monument could be parceled into two or three smaller land areas, calling it a "very strong possibility."



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"The White House is going to take their time to review it," he added.

In a statement to E&E news, Herbert's office reiterated that it had not received Zinke's recommendations to the White House ahead of yesterday's leaked report.

"We appreciate Interior Secretary Ryan Zinke's thorough review of the recent use of the Antiquities Act in Utah. Now that his recommendations are in the hands of the President, our office stands ready to answer any questions the White House may have about those recommendations," Herbert's office said.

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11. NATIONAL MONUMENTS: Zinke review of N.M. sites contains errors — Sen. Heinrich

E & E News, Sept. 19 | Kellie Lunney

Interior Secretary Ryan Zinke's proposed recommendations to alter two of New Mexico's national monuments are based on factual errors, Sen. Martin Heinrich said today.

The New Mexico Democrat said the department's draft monument review contains inaccuracies about road closures, hunting and fishing access, and the U.S.-Mexico border as it pertains to the two monuments in his state.

"I certainly hope that before the president acts on any of these recommendations, that the secretary makes sure that he gets his facts straight," said Heinrich during an unrelated hearing.

The senator added that he was creating a fact sheet on the New Mexico monuments that more consistently reflect "conditions on the ground."

Specifically, Heinrich said the report incorrectly stated that the footprint of the Rio Grande del Norte National Monument in Taos County had led to road closures, adversely affecting ranching.

The report stated that "road closures due to monument restrictions have left many grazing permittees choosing not to renew permits." Heinrich said, "I confirmed with BLM [Bureau of Land Management] staff that that is not accurate."



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He also said Zinke mischaracterized the proximity of the Organ Mountain-Desert Peaks National Monument to the international border. The report stated that the OMDP monument "abuts" the border and that "border security is a concern resulting from the designation, as the proclamation restricts motorized transportation close to the border."

Heinrich said that, based on Department of Homeland Security advice, the monument boundary was set 5 miles north of the international border.

The New Mexico Wildlife Federation said ranching is still allowed in both places and monument designations haven't resulted in a loss of access.

"The Bureau of Land Management has confirmed to our organization that no roads have been closed in either monument since designation," said Todd Leahy, the organization's deputy director. "In response to the border, there's no evidence to suggest that since designation the security of our border has been impacted in any way."

Zinke's draft report, submitted to President Trump last month and leaked this past weekend, recommended reducing the boundaries of as many as six monuments.

They include the Grand Staircase-Escalante and Bears Ears monuments in Utah; Gold Butte National Monument in Nevada; and the Cascade-Siskiyou National Monument, which straddles Oregon and California; as well as both the Rose Atoll and the Pacific Remote Islands marine national monuments (Greenwire, Sept. 18).

As for the two New Mexico sites, which together constitute more than 700,000 acres of BLM-managed land, the report recommended revising their management plans as well as amending their proclamations under the Antiquities Act "to continue to protect objects and also prioritize public access; infrastructure upgrades, repair and maintenance; traditional use; tribal cultural use; and hunting and fishing rights."

Heinrich disputed that the monuments' designations restricted hunting access on the lands, saying he hunts quail in the Organ Mountains and that Rio Grande del Norte "hosts a big horn sheep hunt that did not exist before the monument designation."



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John Ruhs, BLM's acting deputy director of operations, told Heinrich that while he was not directly involved with writing or fact-checking the draft monument report, he "did answer questions and provide data as necessary."

Ruhs, a witness at the Energy and Natural Resources Committee hearing, said he would take Heinrich's questions and concerns back to Interior.

"Our secretary is pretty thorough on things, so if we've identified inconsistencies, and I take that information back, I am sure there would be an opportunity to fix those," said Ruhs.

BLM spokeswoman Megan Crandall referred questions on the monument review and Heinrich's comments to the main Interior press shop. Interior press secretary Heather Swift referred questions to the White House.

"The Trump administration does not comment on leaked documents, especially internal drafts, which are still under review by the president and relevant agencies," said spokeswoman Kelly Love.

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12. INTERIOR: Whistleblower included in staff-reassignment probe — IG

E & E News, Sept. 19 | Michael Doyle

The attorney for high-profile Interior Department whistleblower Joel Clement asked investigators today for reassurances that his case will be included in a broader inquiry into the department's controversial reassignment of senior staff.

It will be, investigators say.

In an exchange that briefly shed light on a politically sensitive and emotionally stressful Office of Inspector General probe, Clement's attorney raised fears that the climate specialist was being excluded from the IG's examination of Interior's Senior Executive Service reassignments.



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"We are concerned that OIG is not reaching out to Mr. Clement as part of its investigation due to an incorrect understanding that the Office of Special Counsel is handling Mr. Clement's case," attorney Katherine Atkinson wrote Deputy Inspector General Mary Kendall.

The inquiry, initially prompted by eight Democrats on the Senate Energy and Natural Resources Committee, involves Interior's decision in June to reassign dozens of senior career employees (Greenwire, July 25).

The reassigned staffers included the Bureau of Land Management state directors in Colorado, Alaska and New Mexico as well as Clement, a former climate policy adviser.

A partner in the firm Wilkenfeld, Herendeen & Atkinson, Atkinson added that Clement "has relevant information to share with OIG" and asks that he "be treated the same as his reassigned peers."

Not to worry, an IG spokeswoman said shortly after receiving Atkinson's five-paragraph letter.

"The assertion is incorrect that Mr. Clement is excluded from our evaluation," said Nancy DiPaolo, the watchdog's director of external affairs. "He is part of the population pool being analyzed."

The IG inquiry is into whether Interior leaders acted within the limits of their authority in making reassignments. This is different from the independent Office of Special Counsel's investigation into Clement's claim of retaliation.

DiPaolo added that "we are coordinating" with the Office of Special Counsel to "ensure that our review does not interfere with their investigation."

After his reassignment earlier this year, Clement filed a whistleblower complaint with the Office of Special Counsel and wrote a first-person account for The Washington Post (Climatewire, July 20).

"The manner in which they reassigned me, going from climate adaptation work in the Arctic to collecting royalty checks [from oil and gas companies], made it pretty clear what their intent was," Clement previously told E&E News.



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Interior officials characterize the senior staff shifts as an exercise in good management.

"Personnel moves among the Senior Executive Service are being conducted to better serve the taxpayer and the Department's operations," the department said in a statement.

The federal government's roughly 7,700 SES employees are selected through a competitive process and receive more money but are also subject to being involuntarily transferred. They can either accept the reassignment or resign, or they can appeal if they think it was the result of discrimination or a prohibited personnel practice.

"Senior executives are the highest paid employees in the federal government and signed up for the SES knowing that they could be called upon to work in different positions at any time," Interior said in its statement.

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